Supreme Court, U.S.
FILED

08-3 APR 21 2008

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No. 08-_____

IN THE SUPREME COURT

OF THE UNITED STATES

BRAHIM (ABE) AYAD AND MICHAEL TROY (MIKE) WATSON Dba, "POLITICALLY DAMNED" TALK RADIO
Petitioners,

v.
RADIO ONE, INC., et al.
Respondents.

On Petition for a Writ of Certiorari to the

Supreme Court of the United States

APPENDICES AND EXHIBITS TO PETITION FOR A WRIT OF CERTIORARI

BRAHIM (ABE) AYAD, Dba
"POLITICALLY DAMNED"
TALK RADIO
4523 CAMILLIA LANE
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(440) 724-6523

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PRO SE

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ATTORNEY FOR
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APPELLEE

MICHAEL TROY (MIKE)

ADAM RUSS

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ATTORNEY FOR
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THE STATE OF OHIO)
) S.S.: Coyne, J.
COUNTY OF CUYAHOGA)

IN THE COURT OF COMMON PLEAS
CIVIL DICISION

BRAHIM (ABE) AYAD, PRO SE DBA " POLITICALLY DAMNED" TALK RADIO, ET AL.,	)	
Plaintiffs,	)	Case No.: CV-542565
-v-	)	
RADIO ONE, INC., WERE RADIO 1300 AM, et al.	)	
Defendants.	)	

- - - - -

TRANSCRIPT OF PROCEEDINGS

- - - - -

Whereupon the following proceedings were had in Courtroom No. 15-D, The Justice Center,

APPENDIX "A"

Cleveland, Ohio, before the Honorable William J. Coyne, on Tuesday, September 14, 2004, upon the pleading filed heretofore.

- - - - -

APPEARANCES:

Michael Troy Watson, Pro Se, and

Brahim Ayad, Pro Se

On behalf of the Plaintiffs;

Joel Hlavaty, Esq. and Larry Conner, Esq.

On behalf of Defendants.

Mary Jean Cooley, RMR
Official Court Reporter
Cuyahoga County, Ohio

TRANSCRIPT P. 34 L. 17-25

However, I do believe that the issues of whether the Contract at all was breached, be it oral or written, is a question of fact for a Jury, and that there are avenues of financial renumeration that can be given to the Plaintiffs if they are successful, as was prayed for in their Complaint, in substantial money damages.

And therefore, considering the entirety of what has been argued to me, and there, by the way was.....

...we were removed from the air is yet to be addressed.

MR. HLAVATY: That's fine.

- - - - -

(Therefore, Defendant's Exhibit A was marked for identification.)

MR. HLAVATY: Thank you.

Your Honor, handing you what has been marked as Defendant's Exhibit A, that was entered into between Radio One and Mr. Ayad back in September of 2003, and you'll see in the very first paragraph it says it begins on September 5, 2003, and runs for a period of 52 weeks

The Contract period expired on or about September 5 of 2004, and Radio One simply decided not to re-execute, re-opt, or renew the Contract.

Now, during the preceding year, there was some additional time sold to Mr. Ayad.

And I will note that all of the exhibits that you received from Mr. Watson have Mr. Ayad's name on them. None of them have Mr. Watson's name on them. All of the checks, all of the invoices were sent—all of the checks came from Mr. Ayad. All of the invoices were sent to Mr. Ayad.

After the Contract began in September of 2003,

CERTIFICATE

- - -

I, Mary Jean Cooley, Official Court Reporter for the Court of Common Pleas, Cuyahoga County, Ohio, do hereby certify that as such reporter I took down in stenotype all of the proceedings had in said Court of Common Pleas in the above-entitled cause; that I have transcribed my said stenotype notes into typewritten form, as appears in the foregoing Transcript of Proceedings; that said Transcript is a complete record of the proceedings had in the Trial of said cause and constitutes a true and correct Transcript of proceedings had therein.

S/.....

Mary Jean Cooley, RMR
Official Court Reporter
Cuyahoga County, Ohio

Gerald E. Fuerst, Clerk of Courts
Court of Common Pleas-Cuyahoga County, Ohio

Case Summary

Case Number:	CV-04-542565
Case Title:	Brahim (Abe) Ayad, et al. vs. Radio One, Inc., et al.
Case Designation:	Contract-Business
Filing Date:	09/10/2004
Judge:	William J. Coyne
Magistrate:	N/A
Room:	N/A
Next Action:	N/A
File Location:	C/A PENDING
Last Status:	INACTIVE
Last Status Date:	03/22/2006
Last Disposition:	DIS. W/ PREJ
Last Disposition Date:	03/17/2006
Prayer Amount:	$.00

APPENDIX "B"

11/28/2005 N/A JE

11-22-05. MOTION OF DEFENDANTS FOR JUDGMENT ON THE PLEADINGS (FILED 8-31-05) IS GRANTED IN PART AND DENIED IN PART. PLAINTIFFS' CLAIM FOR BREACH OF CONTRACTS IS THE ONLY CLAIM THAT SURVIVES DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS. ACCEPTING PLAINTIFFS' ALLEGATIONS AS TRUE, AS THIS COURT MUST FOR THE PURPOSE OF RULING ON A MOTION FOR JUDGMENT ON THE PLEADINGS, THE COURT FINDS THAT PLAINTIFFS HAVE PLEAD A CAUSE OF ACTION FOR BREACH OF AN ORAL CONTRACT THAT MODIFIED AND EXTENDED A WRITTEN AGREEMENT BEWTEEN THE PARTIES. THE COURT FINDS THAT PLAINTIFFS' BREACH OF CONTRACT CLAIM APPLIES ONLY TO CORPORATE DEFENDANT RADIO ONE, INC. PLAINTIFFS' BREACH OF CONTRACT CLAIM DOES NOT APPLY TO ANY OF THE INDIVIDUAL DEFENDANTS BECAUSE, AS A MATTER OF LAW, INDIVIDUAL LIABILITY SHOULD NOT BE EXTENDED TO CORPORATE REPRESENTATIVES ACTING IN THEIR CORPORATE CAPACITY. JUDGMENT IS GRANTED IN FAVOR OF ALL DEFENDANTS

ON ALL REMAINING CLAIMS. PLAINTIFFS CASE MAY PROCEED AGAINST DEFENDANT RADIO ONE, INC ONLY AND UNDER BREACH OF CONTRACT CLAIM ONLY. BOOK 3447 PAGE 0330 11/28/2005 NOTICE ISSUED

APPENDIX "B"

Gerald E. Fuerst, Clerk of Courts
Court of Common Pleas-Cuyahoga County, Ohio

Case Summary

Case Number:	CV-04-542565
Case Title:	Brahim (Abe) Ayad, et al. vs. Radio One, Inc., et al.
Case Designation:	Contract-Business
Filing Date:	09/10/2004
Judge:	William J. Coyne
Magistrate:	N/A
Room:	N/A
Next Action:	N/A
File Location:	C/A PENDING
Last Status:	INACTIVE
Last Status Date:	03/22/2006
Last Disposition:	DIS. W/ PREJ
Last Disposition Date:	03/17/2006
Prayer Amount:	$.00

APPENDIX "C"

03/13/2006 D1 SR	SUBPOENA FOR: MR. TYRONE S. SHABAZZ, SERVED MAR. 7, 2006.
03/13/2006 D1 SR	SUBPOENA FOR: MR. ANTHONY SAHIL BILAL, SERVED MAR. 7, 2006
03/13/2006 N/A OT	MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER OF BETTYSUE FUER...ALAN M. RAUSS (000888)
03/13/2006 N/A MO	MOTION FOR PROTECTIVE ORDER OF BETTYSUE FUER ALAN M. RAUSS (0000888) 03/29/2006-UNKNOWN
03/10/2006 P2 OT	P2 MICHAEL TROY WATSON RESPONSE TO DEFTS MOTION FOR SUMMARY

	JUDGMENT. PRO SE 9999999
03/10/2006 D OT	DEFENDANT(S) RADIO ONE, INC. (D1) and RADIO ONE, INC. (D2) OPPOSITION TO PLTF'S MOTION FOR SUMMARY JUDGMENT...FILED. JOEL R. HLAVATY 0027005
03/17/2006 N/A/ JE	3-16-06. PLAINTIFFS MOTION FOR SUMMARY JUDGMENT DENIED. DEFT. RADIO ONE, INC.'S MOTION FOR SUMMARY JUDGMENT GRANTED. THE COURT, HAVING CONSIDERED ALL THE EVIDENCE AND HAVING CONSTRUED THE EVIDENCE MOST STRONGLY IN FAVOR OF THE NON-MOVING PARTY, DETERMINES THAT REASONABLE MINDS CAN COME TO BUT ONE

CONCLUSION, THAT THERE ARE NO GENUINE ISSUES OF MATERIAL FACT, AND THAT DEFT. RADIO ONE IS ENTITLED TO JUDGMENT AS A MATTER OF LAW. ALL OTHER MOTIONS DENIED AS MOOT. FINAL. COURT COST ASSESSED TO THE PLAINTIFF(S). BOOK 3512 PAGE 0266 03/17/2006 NOTICE ISSUED

Court of Appeals of Ohio
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 88031

BRAHIM (ABE) AYAD, DBA POLITICALLY DAMNED TALK RADIO, ET AL.

PLAINTIFF-APPELLANTS

vs.

RADIO ONE, INC., ET AL.

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-04-542565

BEFORE: Boyle J., Kilbane, P.J., and Blackmon, J.

RELEASED: May 24, 2007

JOURNALIZED:

APPENDIX "D"

BOYLE, M.J., J.:

Plaintiff-appellants, Brahim Ayad and Michael Troy Watson, d.b.a. Politically Damned Talk Radio, appeal from a March 17, 2006 judgment of the Cuyahoga County Court of Common Pleas, granting the motion for summary judgment of appellee, Radio One, Inc. ("Radio One").

On September 10, 2004, appellants filed a complaint against Radio One and six other defendants, for breach of contract, violation of their right to free speech, tortuous interference with their right to contract, libel and/or slander, breach of practice of custom, discrimination by race, religion, and/or political ideology, and conspiracy to harm[1]. Simultaneously, appellants filed a motion for temporary restraining order, commanding their immediate return to the airways at WERE in the time previously allotted to their program. The Trial Court denied appellants' motion for a temporary restraining order on September 16, 2004.

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[1] The other defendants named were WERE Radio 1300 AM ("WERE"), Catherine L. Hughes, Chairperson of the Board and Secretary of Radio One, Carl Hamilton, Vice President in Charge of Operations of Radio One, David Bevins, Corporate Executive of Radio One and WERE, Bill Glover Sales Manager of Radio One and WERE, and John Doe.

On October 12, 2004, defendants removed the case to the United States District Court for the Northern District of Ohio, Eastern Division. However, on July 19, 2005, the Federal District Court granted defendants' motion for judgment on the pleadings with respect to all federal claims. It further dismissed the remaining state claims for lack of subject matter jurisdiction and remanded the case to the Cuyahoga County Court of Common Pleas.

On August 31, 2005, defendants filed a motion for judgment on the pleadings, which the trial court granted in part, and denied in part, on November 23, 2005. It granted judgment to all defendants, except for Radio One, and granted judgment on all of appellants' claims, except for their breach of contract claim.

Radio One filed a motion for summary judgment on February 8, 2006 and appellants filed their motion for summary judgment on February 24, 2006. On March 17, 2006, the Trial Court denied appellants' motion for summary judgment and granted judgment as a matter of law to Radio One.

It is from this judgment which appellants appeal, raising the following five assignments of error:

"[1.] The Trial Court erred in granting [Radio One's] Motion for Summary Judgment contrary to law of Summary Judgment and the facts at issue in

the case for reasons including, that outstanding issues of material fact remained unresolved***

"[2.] The Trial Court erred in denying [appellants'] first motions to compel and then granted [Radio One's] Motion for Summary Judgment in spite of their refusal to comply with discovery, including interrogatory response, production of documents and/or deposition appearance.

"[3.] The Trial Court erred in granting [Radio One's] Motion for Judgment on the Pleadings as to dismissed defendants*.**

"[4.] The Trial Court erred in denying [appellants'] second and third Motions to Compel and then granting [Radio One's] Motion for Summary Judgment in spite of their refusal to comply with discovery, including interrogatory response, production of documents and/or deposition appearance.

"[5.] The Trial Court erred in granting Summary Judgment overruling the 'law of the case' as the Trial Court had previously determined that the case 'would go to the jury' in the Court's Temporary Restraining Order ruling and overruled [defendant's] Motion for Judgment on the Pleadings finding that [***] 'Plaintiffs case may proceed against the defendant, Radio One, Inc.,

only and under the breach of contract claim only."[2]

In their first assignment of error, appellants present three issues for our review. They maintain that the Trial Court erred in granting summary judgment to Radio One when if found that Radio One did not breach an oral agreement between the parties, a written agreement, or breach the custom and practice between the parties.

In order for a summary judgment to be granted, the moving party must prove: "*** (1) no genuine issues of material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the nonmoving party, that conclusion is adverse to the party against whom the motion for summary judgment is made." *Mootispaw v. Eckstein, (1996), 76 Ohio St. 3d 383, 385.*

The Ohio Supreme Court stated in *Dresher v. Burt, (1996), 75 Ohio St. 3d 280, 296,* "***the moving party bears the initial responsibility of

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[2]Plaintiffs presented six other assignments of error in their brief, numbered six through eleven. However plaintiffs did not argue them or put forth any reasons or authority in support of these assignments, as required by App. R. 16(7). As such, we will not address them.

informing the Trial Court of the basis for the Motion, and identifying those portions of the record which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim. The 'portions of the record' to which we refer are those evidentiary material listed in Civ. R. 56 (C), such as the pleadings, depositions, answers to interrogatories, etc., that have been filed in the case. *** (Emphasis sic.) If the moving party satisfies this burden, then the moving party has the burden,
pursuant to Civ. R. 56(E), to provide evidence demonstrating a genuine issue of material fact. If the nonmoving party does not satisfy this burden, the summary judgment is appropriate. Civ. R. 56(E).

Appellate Courts review a Trial Court's granting of Summary Judgment de novo. *Brown v. Scioto Cty. Bd. Of Commrs.*, (1993), 87 Ohio App. 3d 704, 711. The *Brown* Court stated that "we review the judgment independently and without deference to the Trial Court's determination." Id. An Appellate Court must evaluate the record "in light most favorable to the nonmoving party." *Link v. Leadworks Corp., (1992), 79 Ohio App. 3d 735, 741.*

Furthermore, a Motion for Summary Judgment must be overruled if reasonable minds could find for the party opposing the Motion. Id.

In the case sub judice, it is undisputed that Radio One and Ayad entered into a written on contract September 2, 2003, where Ayad paid for airtime on WERE to broadcast a radio-talk show, Politically Damned.[3] The Contract was titled: "WERE-AM TIME BROKERED CONTRACT." Under the contract, Ayad was identified as the "time broker."[4]

Paragraph one of the agreement stated:

"In consideration of the weekly Net Sum of $200.00, Radio One, Inc. agrees to sell and Time Broker agrees to buy the Friday, 10:00pm-11:00pm segment of available airtime on the Station with weekly payment due each day of broadcast beginning September 5th, 2003 for a period of 52 weeks (see section 14). The Station reserves the right to change program times with reasonable notice. All sales are subject to terms and conditions set forth below."[5]

The final paragraph of the contract further provided:

"This agreement may not be changed, altered, or modified except in writing. The only persons authorized to alter the terms of this agreement on behalf of Radio One, Inc. and WERE

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[3]Appellant Watson was not a party to the Contract.

[4]A time broker pays the radio station a fee for the right to broadcast a program for a set period of time.

are the Station Manager of WERE, the General Manager and the Operations Manager of Radio One Cleveland."

It is also undisputed that appellants orally purchased additional hours of airtime per week from Radio One. Initially, Politically Damned aired for one hour per week, every Friday, from 10:00 p.m. to 11:00 p.m. On October 24, 2003, appellants purchased an additional hour per week, on Friday evenings, from 10:00 p.m. to 12:00 a.m. On March 19, 2004, they purchased another hour per week, from 9:00 p.m. to 10:00 p.m., every Friday. Thus, appellants' show was then on the air each Friday, from 9:00 p.m. o midnight.

Finally, on May 25, 2004, appellants purchased the 11:00 p.m. to 12:00 a.m. time period every Monday through Thursday, for a total of seven hours of airtime per week.

Appellants aired their final broadcast on Friday, September 3, 2004. On Monday, September 6, 2004, Bevins notified appellants that WERE was not renewing their contract. Appellants had already paid $1800 in advance for two weeks of programming, from September 6,

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[5]The parties agree that according to the Time Broker Contract, Ayad was required to pay each week, with payment due "each day of broadcast." Nevertheless, it was evident from the testimony of Watson and William Glover, WERE's

2004 through September 17, 2004. Radio One returned the check to appellants on September 9, 2004.

In their first issue presented, appellants claim that the written contract between Ayad and Radio One, entered into on September 3, 2003, was orally modified. They contend that the original contract's expiration date did not apply and that the modified agreement did not have an expiration date.

It has been long established that contracts may be written or oral. *Exkliff v. Walters, 168 Ohio App. 3d 727, 2006-Ohio-4817, at ¶ 22.* It is also well settled that written contracts may be orally modified or modified by subsequent acts. *Wilhelmy v. 15201 Detroit Corp. (June 5, 1997), 8th Dist. No. 71290, 1997 Ohio App. LEXIS 2442,* at *10,* citing *Smaldino v. Larsick (1993), 90 Ohio App. 3d 691, 698.* However, "[t]he general rule is that a written contract may be orally amended if the oral amendment has the essential elements of a binding contract." *Carrocce v. Shaffer (Oct. 31, 1997), 11Dist. No. 96-T-5521, 1997 Ohio App. LEXIS 4845,* at *9, Richland Buildings, Inc. v. Thome, et al. (1950), 88 Ohio App. 520, 527.*

Account Executive/Account Manager, that almost from the beginning of the contract, Ayad paid for the programming two weeks in advance, and that is what was expected of him.

The necessary elements of a valid contract include an offer, acceptance, contractual capacity, consideration (the bargained for legal benefit and/or detriment), a manifestation of mutual assent and legality of object of consideration. Id. at ¶ 23, citing *Kostelnik v. Helper, 96 Ohio St. 3d 1, 2002-Ohio2985,* at ¶ *16.* It is imperative that there was a "meeting of the minds" as to the essential terms of the agreement. Id.

Appellants allege that "first modification of the original agreement occurred" when the contract was "rewritten and assigned a new contract number on or about January 30, 2004." Appellants contend that "even dismissed defendant/appellee Bevins acknowledges that more than one contract existed," citing numerous portions of Bevins' deposition testimony.

Radio One maintains, however, that the original contract was never modified, and that each time appellants purchased more airtime, it was under the umbrella of the original Time Broker Contract. Radio One concedes that two different contract numbers existed on documents that were sent to appellants, but claims they were accounting issues that did not alter the original contract.[6]

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[6] Radio One further argues that when a document is clear an ambiguous, parole evidence is not permitted to contradict the contract terms. Under Ohio law, the parole evidence rule forbids the use of an oral or written statement

Radio One originally sent Ayad documents, labeled either "sales order" or "invoice," summarizing the airtime Ayad had purchased, which had a contract number of 710380. Beginning on January 30, 2004, and throughout the remainder of the parties' relationship, Ayad was sent documents WERE labeled "Broadcast Contract," which had a different contract number of 7100526.

Bevins and Glover testified in their depositions that these documents originated from Radio One's Marketron system. They both explained that Marketron is the station's accounting and scheduling software program that automatically assigns a contract number to an

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22, 27. However, this rule does not apply to a later oral modification of the contract. *Uebelacker v. Cincom Systems, Inc. (1988), 48 Ohio App. 3d 268, 549,* paragraph three of the syllabus. Thus the parole evidence rule does not apply here.

invoice or sales order, which is then sent to clients.

They both further stated that the Marketron program is typically used for advertisers, not time brokers. Bevins said that the Marketron does not have the correct terminology for time brokers, and that is why they use a separate time-broker agreement. However, he agreed that documents

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made before or at the time a written contract is entered to vary that contract. *Galmish v. Cicchini (2000), 90 Ohio St. 3d*

created in Marketron are sent to both advertisers and time brokers, so they have a record of the airtime purchased.

Glover explained that time-broker contracts do not have a contact.[7] He also stated that the contract numbers on the documents sent to Ayad were automatically generated by Marketron and were simply for "traffic and billing purposes."

Both Bevins and Glover described why appellants were sent documents that had a new contract number on them. Their testimony was consistent that appellants had a late payment on January 30, 2004. When this happens, they said that Marketron dos not allow additional data to be put in the system, unless a new contract number is generated. Both explained that it did not mean that a new contract was created, but that it was a modification of the sales order between the parties.

Appellants argue that other factors, in addition to two contract numbers, lead them to believe there was a new agreement. They assert that a new contract existed because new terms and conditions were set forth on the back of the Broadcast Contract that was sent to them.

On the back of the Broadcast Contract, it states "Sales Agreement: Terms and Conditions."

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[7]It is significant to note that the actual Time Broker Agreement did not have a Contract Number assigned to it.

Appellants allege that under section number two, termination, Radio One was required to give them fourteen days prior notice before terminating the contract. This provision states: "[e]ither party may terminate this Agreement, without cause, upon giving the other party at least 14 days prior notice***." It further provides: "[s]tation may, effective upon notice to Advertiser or Agency, terminate this [a]greement at any time upon material breach by Advertiser or Agency***.

Bevins explained in his deposition that the terms and conditions only applied to advertisers. In deed, a review of the terms and conditions supports Bevins' testimony. It repeatedly refers to the parties as "Advertiser or Agency" and the "Station." Under the first section, billing and payment, it states that "[p]ayment is due by Advertiser or Agency within 30 days of the billing date as set forth on the invoice. ***" That was not the case with appellants, who all agree, had to pay in advance, or Politically Damned would not have aired.

Bevins does admit that on the front of the Broadcast Contract, it identifies Ayad as the advertiser. However, he explained that Ayad was a time broker, not an advertiser. In order to input data into Marketron, which was designed for the station's advertisers, they had to identify Ayad as the advertiser.[8]

The portions of the transcript which appellants point to in support of their proposition that Bevins repeatedly acknowledged that two contracts existed, are taken out of context. Bevins consistently states, throughout three days of deposition testimony, that there were modifications of additional air sales, as well as changes to the schedule, but never to the terms and conditions of the original agreement. He further explains that the purchase of the additional time was under the umbrella of the original contract and that the original terms and conditions still applied, including the expiration date.

After a review of the evidence in the record, we agree that there is no genuine issue of material fact as to whether the original contract was revoked or modified. The Time Broker Contract states in the first paragraph that "[t]he Station reserves the right to change program times with reasonable notice." It further provides that "[a]ll sales subject to the terms and conditions set forth below." Later in the agreement, it also refers to additional time purchased, stating in paragraph three, "[t]ime broker agrees that, with respect to any given segment of airtime purchased ***." In paragraph fourteen, it also refers to "[t]his one year agreement ***."

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[8]Appellants do not claim that they ever believed that Ayad was an advertiser.

Thus, it is apparent from the face of the written contract that he parties contemplated the fact that additional airtime may be purchased by the time broker, and if so, the sales would be subject to the terms and conditions set forth in the original agreement. Further, Bevins' and Glover's testimony corroborated the fact that the additional sales of airtime were also subject to the original terms and conditions of the contract. No genuine issue of material fact exists as to whether an oral agreement existed, such that it nullified the original terms of the contract. Appellants' first issue has no merit.

In their second issue presented, appellants maintain that Radio One breached the written agreement between them and Ayad.

In this argument, appellants allege that Radio One breached the written Broadcast Contract, not the Time Broker Contract. Although not entirely clear, it seems appellants claim that Radio One violated the terms and conditions listed on the back of the Broadcast Contract.

However, we already determined from reviewing the document, as well as Bevins' and Glover's testimony, that terms and conditions on the back of Appellants were time brokers, not advertisers. Thus, there is no genuine issue of material fact regarding this issue and appellants' second issue is without merit.

In their third issue, appellants maintain that Radio One breached the custom and practice which existed between the parties. Specifically, they allege that because they paid two weeks in advance throughout the duration of the contract, which added weeks of programming to the schedule, that Radio One breached their agreement when it cancelled Politically Damned without notice.

Parties' conduct and declarations, evidenced by the surrounding circumstances, can be sufficient to show a meeting of the minds that the parties intended to create binding obligations. *Alliant Food Services, Inc. v. Powers, 8th Dist. No. 351088, 2002-Ohio-4193,* at ¶ *27.* However, if the minds of the parties have not met, then no contract has formed. Id. At ¶ *26.*

Ayad signed the Time Broker Contract requiring him to pay "each day of broadcast." However, it was undisputed that almost from the beginning of the relationship, Ayad paid two weeks in advance. Nevertheless, this does not alter the fact that the parties had an agreement for fifty-two weeks in advance does not extend the length or duration of the original written contract. In addition, there was no language in the contract which provided for automatic renewal or rollover of the contract. As such, no genuine issue of material fact exist and appellants' third issue does not have merit.

Having determined that all three issues lack merit, appellants' first assignment of error is not well taken.

In their second and fourth assignments of error, appellants argue that the trial court erred with respect to their motions to compel. First, they ague that the trial court erred when it denied their first motion to compel, and then granted summary judgment to Radio One. Secondly, they argue that the trial court erred in not granting their second motions to compel, and then granted summary judgment for Radio One.

The standard of review of a trial court's decision in discovery matters is whether the court abused its discretion. *Mauzy v. Kelly Services, Inc. (1996), 75 Ohio St. 3d 578,592.* Abuse of discretion connotes more than an error of law or of judgment; it implies an unreasonable, arbitrary, or unconscionable attitude on the part of the court. *Quonset Hut, Inc. v. Ford Motor Co. (1997), 80 Ohio St. 3d 46, 47,* citing *Pembaur v. Leis (1982), 1Ohio St. 3d 89, 91.*

It is unclear as to what appellants are referring to when they say "first motion to compel," since none of the motions was labeled "First Motion to Compel." However, they do claim that the trial court issued its decision in this matter without them "having the opportunity to cross-examine key witnesses of a central element within the case." We interpret their argument to mean that since they

did not get to depose Hughes and Hamilton (which is the subject of both of the Second and Third Motions to Compel), they assert that the trial court erred in granting summary judgment.

After reviewing the record, we cannot conclude that the trial court abused its discretion. Appellants filed seven motions to compel from November 17, 2005 until February 24, 2005. Within that same time frame, Radio One filed numerous motions, requesting protective orders from the court to preclude the depositions of Hughes and Hamilton. Hughes and Hamilton were originally named defendants in the suit. However, the trial court dismissed them in November 2004, when it granted, in part, defendants' judgment on the pleadings. Thus, they were no longer parties to the suit.

During this same time frame, appellants deposed Bevins and Glover. Their testimony showed that Bevins made all of the decisions with respect to WERE. It further showed that Hughes, who was Chairperson of the Board and Secretary of Radio One, knew little or nothing about the day to day activities of WERE. Hamilton, Voce President in Charge of Operations of Radio One and Supervisor to Bevins, knew that Bevins did not want to renew Ayad's contract, but did not advise him in any way regarding the matter, except to refer him to Valardo, Chief Counsel of Radio One.

Thus, the trial court did not abuse its discretion when it failed to order Hughes and Hamilton to appear for depositions. The trial court had sufficient evidence upon which to grant or deny summary judgment. We cannot conclude that it abused its discretion.

In its third assignment of error, appellants claim that the trial court erred when it granted judgment on the pleadings and dismissed all defendants except for Radio One. They contend that the trial court erred "in making this determination as a matter of law based on the facts that had been presented when it dismissed the claims of these dismissed Defendants'/Appellees." However, neither court, nor the trial court, can look to the facts that had been developed in the case on a motion for judgment on the pleadings.

The standard of review of the grant of a motion for judgment on the pleadings is the same as the standard of review of a dismissal of a complaint based upon a judgment upon the pleadings requires us to independently review the complaint and determine if the dismissal was appropriate. *Rich v. Erie County Department of Human Resources (1995), 106 Ohio App. 3d 88, 91.* A reviewing court need not defer to the trial court's decision in such cases. Id. In considering such a motion, one must look only to the face of the complaint. *Nelson v. Pleasant (1991), 73 Ohio App. 3d 497, 597.*

Appellants filed claims against defendants for breach of contract, violation of their right to free speech, tortuous interference with their right to contract, libel and/or slander, breach of practice or custom, discrimination by race, religion and/or political ideology, and conspiracy to harm. After remand from the Northern District Court of Ohio, the only remaining state claims were breach of contract, tortuous interference with Plaintiffs' right to contract, libel and slander, breach of practice and custom and conspiracy to harm. The trial court did not grant judgment on the pleadings with respect to the breach of contract claim. It did, however, dismiss all defendants except for Radio One.

With respect to the breach of contract claim and the trial court's dismissal of all defendants except for Radio One, we conclude the trial court did not err. The Time Broker Contract was not signed by a corporate officer in his or her individual capacity. The signature line on the contract states that the station manager signed it, "For Radio One, Inc." Generally, corporate officers are not individually liable on a breach of contract claim unless they personally signed the contract in their individual capacity. *Spicer v. James (1985), 21 Ohio App. 3d 222, 223.* Here, none of the defendants signed the contract in their individual capacity, but "For: Radio One, Inc."

Thus, the trial Court did not err with respect to dismissing all defendants except Radio One on the breach of contract claim.

The trial court granted judgment on the pleadings against all defendants on the remaining state claims: tortuous interference with plaintiffs' right to contract, libel and slander, breach of practice and custom and conspiracy to harm. Thus, the trial court found that plaintiffs failed to state a claim with respect to each one.

A review of the elements of each of these claims does not reveal any error on the part of the trial court, since appellants did not allege sufficient facts in their complaint to maintain these causes of action. As such, appellants' third assignment of error is not well taken.

In their final assignment of error, appellants contend that the trial court did not follow the "law of the case" because it granted summary judgment after it had determined that the case would go to the jury on the breach of contract claim. This argument has no merit.

In *Hopkins, N.KA. Petrson v. Dyer, 104 Ohio St. 3d 461, 2004-Ohio-6769,* at ¶ *15,* the Supreme Court of Ohio stated:

"The law of the case is a longstanding doctrine in Ohio jurisprudence. "The doctrine provides that the decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceedings

in the case at both the trial and reviewing levels.' *Nolan v. Nolan [1984], 11 Ohio St. 3d [1,] 3 ***.* The doctrine is necessary to ensure consistency of results in a case, to avoid endless litigation by settling the issues, and to preserve the structure of superior and inferior courts as designed by the Ohio Constitution. *State ex rel. Potain v. Mathews (1979), 59 Ohio St. 2d 29, 32 ***."*

The trial court's ruling on a motion for judgment on the pleadings was not a decision of a reviewing court. Thus, appellant's fifth assignment of error is overruled.

Accordingly, appellants' five assignments of error are not well taken. The judgment of the Cuyahoga County Court of Common pleas is affirmed.

It is ordered that appellees recover from appellants costs herein taxed.

The court finds there were no reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

S/

MARY J. BOYLE, JUDGE
MARY E. KILBANE, P.J. and
PATRICIA A. BLACKMON, J.
CONCUR

The Supreme Court of Ohio

Brahim Abe Ayad, dba., etc., et al.
v.
Radio One, Inc., et al.

Case No. 2007-1816

ENTRY

FILED
January 23, 2008
CLERK OF COURT
SUPREME COURT
OF OHIO

Upon consideration of the jurisdictional memoranda filed in this case, the Court declines jurisdiction to hear the case.

Upon consideration of appellees' motion to dismiss appeal and appellants' motion to strike motion to dismiss appeal.

It is so ordered by the Court that the motions are denied as moot.

(Cuyahoga County Court of Appeals; No. 88031).

S/
THOMAS J. MOYER
Chief Justice

APPENDIX "E"

APPENDICES OF EXHIBITS

1). Original contract between Radio One Inc. and Abe Ayad

9-3-03 to begin broadcast on 9-5-03
CONTRACT NO. 7100380.....I

2). Contracts rewritten to begin 1-30-04 prepared and given to Plaintiffs titled "BROADCAST CONTRACTS" that Defendants claim were not contracts
CONTRACT NO 7100526..... II

3). Calendar count of broadcast 54 WEEKS.....III

4). E-MAIL DEMANDS OF ADL TO CANCEL PROGRAM AND DEFENDANT'S MEMOS.....IV

WERE 1300 AM

2510 St. Clair Ave.
Cleveland, Ohio 44114
216-579-1111
Fax: 216-575-9141

WERE-AM TIME BROKER CONTRACT

Agreement made on this date September 3, 2003, by and between Radio One, Inc., Radio Station WERE-1300AM, Cleveland, Ohio (WERE or Station) and Abe Ayad (who is the "time Broker").

WITNESSETH

1) **In consideration of the weekly Net Sum of $200.00, Radio One, Inc. agrees to sell and Time Broker agrees to buy the Friday, 10:00pm-11:00pm segment of available airtime on the Station with weekly payment due each day of broadcast beginning September 5th, 2003 for a period of 52 weeks (see section 14). The Station reserves the right to change program times with reasonable notice. All sales are subject to the terms and conditions set forth below.**

APPENDIX EXHIBIT "I"

2) The Station has absolute discretion to refuse to broadcast all or any part of any program content and/or commercial matter. Time Broker's program will consist of the program titled, **"Politically Damned"**. To insure quality control, no person(s) other than the forenamed host, will be "on-air" during Time Broker's program without prior approval of WERE. If requested, Time Broker will deliver to the Station any pre-recorded complete, ready to air programs or commercials for Station's clearance at least 48 hours prior to the intended broadcast.

14) This one year agreement may be terminated by either party at thirteen (13) week increments with written notice sent by certified or registered mail four weeks prior to the end of a thirteen (13) week period. However, that this agreement may be terminated by Radio One, Inc. at any time and without notice if, in its opinion or that of it's counsel this agreement or any portion thereof is, or may be, in violation of state or federal law or the rules, regulations, policies and/or decisions of the Federal Communications Commission, or it's Time Broker's programming is deemed by Radio One, Inc. to likely place the Station's license in jeopardy at the FCC.

15) Radio One, Inc. may assign this contract/agreement to any entity that, directly or indirectly, controls, is controlled by or is under common control with, Radio One, Inc.

16) Time Broker will ensure that the program meets technical and quality standards equal to those of programming broadcast by commercial radio stations in the United States. If Station in the reasonable exercise of its discretion finds that program does not meet these standards; it shall advise Time Broker in writing of the specific technical deficiencies and, if such technical deficiencies have not been corrected within five business days, Station may reject such program until such time as the technical deficiency is corrected.

17) Notice shall be addressed as follows:

To Time Broker:

Name: Abe Ayad
Business:
Address: 1905 East 55th Street
Cleveland, Ohio 44103-3649

Phone: 216-881-2727
Fax:

To Station: Radio One, Inc.
2510 St. Clair Ave.
Cleveland, Ohio 44114
Attention: Station Manager

18) This agreement may not be changed, altered, or modified except in writing. The only persons authorized to alter the terms of this agreement on behalf of Radio One, Inc. and WERE 1300 are the Station Manager of WERE, the General Manager and the Operations Manager of Radio One Cleveland.

For: Radio One, Inc.

S/

Station Manager WERE
Name-Abe Ayad

For Time Broker

S/

Title

Date

ORIGINAL CONTRACT
BEGINNING
SEPTEMBER 5, 2003 FOR ONE
HOUR FRIDAYS AT
A RATE OF $200.00 PER WEEK
BILLING STATEMENT
IDENTIFIES CONTRACT
NUMBER 7100380

CONTRACT REWRITTEN
JANUARY 30, 2004
FOR 2 HOURS PER DAY
FRIDAYS AT A TOTAL OF
$300.00 PER WEEK
BILLING STATEMENT
IDENTIFIES
REWRITTEN CONTRACT
NUMBER 7100526

APPENDIX EXHIBIT "II"

WERE 1300 AM

Broadcast Contract

ABECO AYAD
1905 E. 55TH STREET
CLEVELAND, OH 44103-3649

Start Date	Contract#	Mod#
02/02/04	7100526	12
End Date	**Date Entered**	**Date Last Modified**
06/11/04	01/30/04	06/01/04
Advertiser		**Station Market**
ABECO AYAD		WERE-AM
Product		**SalesRep/Office**
		BILL GLOVER

Standard Billing Cycle Estimate#

Accepted for Station

Name Title

See reverse for accepted terms and conditions, if any

Accepted for advertiser OR agency(and MBS, if any) as agent for the advertiser

Bill Glover 6/12/04

Name Title

☑ Print Exact Times ☑ Print Spot Prices ☑ Print Spot Lengths

TOTAL SPOTS 1041

GROSS TOTAL $ 22,800.00

Notes to Traffic: End dating line34 so that the 9-10 hour will not run on 9/03/04....extending line 29 and adding lines 36 and 37-Glove

APPROVE	DECLINE	
☑	○	038rmass, 08/31/04 @3:28PM
☑	○	038TBUSH, 08/31/04 @3:36PM
○	○	General Manager
☑	○	038CISAA, 08/31/04 @3:20PM

* Sent to the traffic system by 038CISAA, 08/31/04 @4:28PM

TERMS AND CONDITIONS

1. BILLING AND PAYMENT

a. The Station will be the Advertiser or Agency, as applicable, using the standard broadcast month, unless provided on the face of this Agreement.

b. Payment is due by Advertiser or Agency within 30 days of the billing date as set forth on the invoice. If accounts become past due, credit may be revoked. In addition, Advertiser or Agency agrees to pay late fees equal to an interest rate equal to the prime rate plus 10% compounded monthly on past due amounts, which shall be paid in addition to amounts paid for advertising. Further Advertiser or Agency agrees to pay collection fees and reasonable attorney fees and such fees shall be payable as liquidated damages in that amount equal to the greater of 30% of the total amount of fees invoiced for advertising services and applicable late fees due or actual collection or attorney fees due.

c. Invoices shall contain dates, advertiser, time and length of commercial announcement, cost and, if commercial code identifying each commercial announcement is requested in advance and supplied by the Advertiser or Agency, such code for each commercial announcement.

d. The Station warrants that all information shown on an invoice was taken from the commercial record produced and maintained at the Station, and will be made available, as will other records adequate to verify performance of condition of sale, upon reasonable request, for inspection by the Advertiser or Agency for a period of 3 months from the month of broadcast. This invoice shall evidence proof of performance.

e. Station grants credit based on joint and several liability. Notwithstanding to whom bills are rendered, Advertiser, Agency and any service used by either Advertiser, or Agency for the purposes of performing media buying or similar services, and/or paying such invoices ("services"), jointly and

severally shall remain fully obligated to pay to Station the amount of any bills rendered by Station within the time specified and until payment is full is received by Station. **Payment by Advertiser to Agency or to Service or payment by Agency to Service, shall not Constitute payment to Station.**

2. TERMINATION.

a. Unless otherwise specified on the face hereof, either party may terminate this Agreement, without cause, upon giving the other party at least 14 days prior notice (or where this Agreement covers sponsorship or partial sponsorship of program (s), upon at least 28 days prior to notice). Notwithstanding the foregoing, Advertiser or Agency may not terminate any contracts of two consecutive weeks or less. If Advertiser or Agency so terminates this Agreement all unpaid accrued charges hereunder shall immediately become due and payable.

b. Station may, effective upon notice to Advertiser or Agency, terminate this a

Agreement at any time (i) upon material breach by Advertiser or Agency, or (ii) if Advertiser's or Agency's credit, in the sole discretion of Station, is impaired. If Station terminates the Agreement pursuant to this Section 2(b), all unpaid accrued charges hereunder shall immediately become due and payable and Advertiser or Agency shall also pay, as liquidated damages, a sum equal to that which Advertiser or Agency would have been obligated to pay hereunder.

c. **Advertiser or Agency may, effective upon notice to Station, terminate this Agreement at any time upon material breach by Station. Upon termination pursuant to this Section 2c, Station shall pay as liquidated damages, a sum equal to the lesser of the following: (i) the actual noncancellable out-of-pockets costs necessarily incurred by Advertiser or Agency through the date of such termination; or (ii) One Hundred Dollars ($100.00).**

S	M	T	W	T	F	S

JANUARY/JAN/ENE

				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

FEBRUARY/FEV/FEB

						1
2	3	4	5	6	7	8
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16	17	18	19	20	21	22
23	24	25	26	27	28	

MARCH/MARS/MAR

						1
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9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

APRIL/AVR/ABR

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6	7	8	9	10	11	12
13	14	15	16	17	18	19
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27	28	29	30			

MAY/MAI/MAYO

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JUNE/JUIN/JUN

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29	30					

JULY/JUIL/JUL

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AUGUST/AOUT/AGO

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31						

SEPTEMBER/SEPT/SEPT

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OCTOBER/OCT/OCT

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NOVEMBER/NOV/NOV

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30						

DECEMBER/DEC/DIC

7	8	9	10	11	12	13
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APPENDIX EXHIBIT "III"

2004

S	M	T	W	T	F	S

JANUARY/JAN/ENE

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4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

FEBRUARY/FEV/FEB

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29						

MARCH/MARS/MAR

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APRIL/AVR/ABR

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MAY/MAI/MAYO

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30	31					

JUNE/JUIN/JUN

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JULY/JUIL/JUL

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AUGUST/AOUT/AGO

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22	23	24	25	26	27	28
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SEPTEMBER/SEPT/SEPT

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OCTOBER/OCT/OCT

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31						

NOVEMBER/NOV/NOV

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28	29	30				

DECEMBER/DEC/DIC

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19	20	21	22	23	24	25
26	27	28	29	30	31	

(Two weeks Paid) (5th - 17th)

CONTRACT

PLAINTIFF'S EXHIBIT 2

-------Original Message----------
From: David Bevins
Sent: Tue 2/17/2004 4:54 PM
To: Feuer, Bettysue
Cc:
Subject: Re: Sample of Abe Ayad's work

Betty---I will run tape of show this week and review it...thanks

David Bevins
General Manager
WZAK/WJMO/WENZ/WERE
Radio One Cleveland
Direct Number: 216-774-0902
Direct Fax: 216-621-2176

-------Original Message----------
From: Feuer, Bettysue
[mailto:BFeuer@adl.org]
Sent: Tue 2/17/2004 4:49 PM
To: David Bevins
Cc:
Subject: Re: Sample of Abe Ayad s work

Dear David;

I am not sure this is the type of show that is good for your station or for our City.

APPENDIX EXHIBIT "IV"

Bettysue
Bettysue Feuer
ADL Regional Director
505 Terminal Tower
Cleveland, Ohio 44113
Tel: 216-579-9600 Fax: 216-579-9690
www.adl.org

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****
****

This e-mail message may contain privileged, confidential and/or proprietary information intended only for the person(s) named. If you are not the intended recipient, please destroy this message, and any attachments, and notify the sender by return e-mail. If you are not the intended recipient(s), or the employee or agent responsible for delivering the message intended recipient(s) you are hereby notified that any dissemination, disclosure or copying of this communication is strictly prohibited.

-------Original Message----------
From: David Bevins [mailto:dbevins@radio-one.com]
Sent: Tuesday, February 17, 2004 4:46 PM
To: Feuer, Bettysue
Subject: Re: sample of Abe Ayad's work

Thank you...we did speak with him after our last conversation and advised him that we are on a seven second delay and if his language or content of the show turns becomes inflammatory, we will dump out of it.

David Bevins
General Manager
WZAK/WJMO/WENZ/WERE
Radio One Cleveland
Direct Number: 216-774-0902
Direct Fax: 216-621-2176

-------Original Message----------
From: Feuer, Bettysue
[mailto:BFeuer@adl.org]
Sent: Tue 2/17/2004 3:58 PM
To: David Bevins
Cc:
Subject: Re: Sample of Abe Ayad's work

Dear David;

I have many more. These are from the last year. I have them going back to March 2000.

Bettysue
Bettysue Feuer
ADL Regional Director
505 Terminal Tower
Cleveland, Ohio 44113
Tel: 216-579-9600 Fax: 216-579-9690
www.adl.org

****
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This e-mail message may contain privileged, confidential and/or proprietary information intended only for the person(s) named. If you are not the intended recipient, please destroy this message, and any attachments, and notify the sender by return e-mail. If you are not the intended recipient(s), or the employee or agent responsible for delivering the message intended recipient(s) you are hereby notified that any dissemination, disclosure or copying of this communication is strictly prohibited.

Radio One, Inc.

Memo

To: WERE File

From: David

Date: 7/26/04

Re: Abe Ayad/Politically Damned

Just spoke with Betty Sue Feuer from the Anti-Defamation League of Greater Cleveland regarding the complaints that she has received concerning the Politically Damned program which airs on WERE. She has not heard the show, but the people calling her are upset because the show is negative to the Jewish Community. I explained that we would check into the show and it's content and have a meeting with the host. Also assured her that we do have a delay on the show and the board operator has control of dumping the show if they find it offensive or detrimental to the station. She asked if I would call her back if we decide to terminate the show. She said she understands the freedom to speech and that people have the opportunity to speak out, but she wanted me to know about the complaints she has been receiving.

Radio One, Inc.

Memo

To: WERE File

From: David

Date: 7/30/04

Re: Politically Damned

Tom Bush, Bill Glover and myself met with the host of Politically Damned today at 2 pm. Abe Ayad and Michael Nelson are the host. We explained that we received a call from the Anti-Defamation League and ask for copies of their most recent shows. We explained to them that we are concerned about the content of their show and that if we feel it continues to be an issue, that we have the ability to end the show at any time. They said they understood that and that they felt they were not doing anything wrong. They said the callers are the problem, not them. They explained that they would like to talk with Betty Sue regarding the show and if someone has a problem, they should call them. I explained that we have 4 stations in Cleveland and if we feel that one station's programming is having a negative effect on our listeners or revenue, we will pull it off the air. We gave them a warning.